

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH**

THURSDAY, THE 27TH JULY 2006 / 5TH SRAVANA 1928

TRC.No. 225 of 2002

TA.1016/1998 of S.T.A.T.ADDL.BENCH,ERNAKULAM

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PETITIONER/APPELLANT:

**M/S.VENEERS AND LAMINATIONS (INDIA)
LTD., USHA KIRON BUILDING, M.G.ROAD, KOCHI-11**

BY ADV. SMT.K.LATHA

RESPONDENT/RESPONDENT:

THE STATE OF KERALA.

BY SPL. GOVERNMENT PLEADER (SHRI V.V. ASOKAN)

**THE ABOVE TRC HAVING BEEN FINALLY HEARD ON 27.7.2006
ALONG WITH TRC NO.226/02 & ST.R.V. NOS.370/04 & 431/04, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:**

**C.N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.**

**T.R.C.NOS.225/02 & 226/02
&
S.T.REV.NOS.370/04 & 431/04**

Dated this the 27th day of July, 2006

JUDGMENT

C. N. Ramachandran Nair, J.

These four connected Tax Revision Cases - two filed by the State and two filed by the assessee, pertain to the assessment years 1981 - 82 and 1982 - 83. The assessee is a manufacturer of veneers and laminations. Admittedly, the raw-material is timber. Having regard to the total value of the products sold, the assessing officer found that the assessee has not accounted sufficient quantity of purchase of timber to justify the quantity produced and sold. Therefore, turnover under Section 5A was estimated and assessed. In first appeal, even though the assessee got relief on other matters, the assessment under Section 5A of the KGST Act on purchase turnover of timber was not disturbed. However, the Tribunal deleted the addition under Section 5A against which State has filed the two Tax Revision Cases. In

other words, the only issue raised by the State in the S.T.Revs. filed by them, is with regard to the liability under Section 5A on purchase turnover of timber. In the cases filed by assessee, it has raised a contention that assessments are completed around fifteen years from the end of the relevant year and therefore assessments are time-barred.

2. So far as the Revisions filed by the State are concerned, we find there is substance in the contention of the learned Special Government Pleader that the Tribunal deleted the addition of the turnover made under Section 5A without any basis. The Tribunal just accepted the argument of the assessee that purchases are from Government depots. If timber is purchased from Government depots, obviously the Forest Department would have collected tax at sale point and we see no reason why the assessee could not have produced purchase bills. The assessee is entitled to get exemption from assessment under Section 5A, if purchase bills showing collection of tax on sale point are produced. Admittedly, the Tribunal has not seen any

such bills and the assumption of the Tribunal that purchases are made from Government depots just based on the submission of the assessee, is incorrect. It is seen from the assessment orders that the assessee has not produced the purchase bills before the assessing officer and that is the reason why the assessment was made under Section 5A. We, therefore, set aside the order of the Tribunal in regard to the deletion of turnover under Section 5A. However, we give one more opportunity to the assessee to produce purchase bills before the assessing officer within two weeks from the date of receipt of a copy of this Judgment. If purchase bills are produced, the assessing officer will verify the genuineness and if he is satisfied, he will delete the turnover under Section 5A. However, if purchase bills are not produced as above, then the assessment under Section 5A will stand confirmed after two weeks from the date of receipt of a copy of this Judgment. We dispose of the two Tax Revision Cases filed by the State as above.

3. So far as the assessee's contentions based on limitation

against the assessments are concerned, we find the contentions are not tenable, as there was no limitation for regular assessment under the Act as held by a Division Bench of this Court in the decision in Geo Sea Foods v. The Addl. Sales Tax Officer and Others ((2000) 8 KTR 21) which was later affirmed by the Full Bench of this Court in Geo Sea Foods v. Addl. Sales Tax Officer (2006 (1) KLT 72(FB)). Accordingly, we reject the TRCs filed by the assessee on limitation. So far as the other issue raised by the assessee, i.e. against five per cent addition on the products sold, since the original addition was ten per cent and the same was reduced to five per cent by the first appellate authority and later confirmed by the tribunal on facts, we find no question of law arising from the decision of the tribunal on this point. We accordingly dismiss the TRCs.

C. N. RAMACHANDRAN NAIR, JUDGE

K. M. JOSEPH, JUDGE

kbk.

**C.N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.**

**TRC NOS.225/02, 226/02 &
S.T.REV.NOS.370/04 & 431/04.**

JUDGMENT

27th July, 2006.